

1 JENNER & BLOCK LLP  
2 STEVEN B. FABRIZIO (*pro hac vice*)  
sfabrizio@jenner.com  
3 KENNETH L. DOROSHOW (*pro hac vice*)  
kdoroshow@jenner.com  
4 1099 New York Avenue, N.W.  
Suite 900  
5 Washington, D.C. 20001  
Telephone: (202) 639-6000  
7 Facsimile: (202) 661-4823

8 GIANNI P. SERVODIDIO (*pro hac vice*)  
9 gps@jenner.com  
10 919 Third Avenue  
38th Floor  
11 New York, NY 10022  
Telephone: (212) 891-1600  
12 Facsimile: (212) 891-1699

13  
14 *Attorneys for Plaintiffs*

15 **UNITED STATES DISTRICT COURT**  
16 **CENTRAL DISTRICT OF CALIFORNIA**

17  
18 COLUMBIA PICTURES  
INDUSTRIES, INC., *et. al.*  
19

20 *Plaintiffs,*  
21

22 v.

23 GARY FUNG, *et. al.*  
24

25 *Defendants.*  
26

Case No. CV-06-05578 SVW (JCx)

PLAINTIFFS' SUPPLEMENTAL  
RESPONSE IN OPPOSITION TO  
DEFENDANTS' *EX PARTE*  
APPLICATION TO COMPEL  
PLAINTIFFS' RESPONSES TO  
DISCOVERY

Pretrial Conference Date: Oct. 28, 2013

Trial Date: Nov. 5, 2013

1       Last week, Defendants rushed to the Court, moving to compel discovery on a  
 2 host of issues about which they had not yet met and conferred with Plaintiffs. *See*  
 3 Defs.' *Ex Parte* Application to Compel Pls.' Responses to Discovery (ECF No. 615).  
 4 Plaintiffs immediately filed a response advising the Court that Defendants had failed  
 5 to meet and confer with Plaintiffs and that many of the issues raised by Defendants  
 6 could be resolved without Court intervention. (ECF No. 616). Plaintiffs submit this  
 7 Supplemental Response in Opposition to Defendants' *Ex Parte* Application in order  
 8 to update the Court about several recent developments that have mooted or narrowed  
 9 the discovery issues on which Defendants prematurely moved:

10       1.     The Parties Met and Conferred: As Plaintiffs predicted in their earlier  
 11 response to Defendants' *Ex Parte* Application, the issues Defendants raised were  
 12 "precisely the sort of issues that discussion among counsel could resolve or narrow."  
 13 Pls. Opp. at 1 (ECF No. 616). At Plaintiffs' initiative,<sup>1</sup> the parties met and conferred  
 14 telephonically on Thursday, September 25, 2013, regarding the discovery at issue in  
 15 the *Ex Parte* Application. The parties were able to narrow several issues, and—  
 16 subsequent to their meeting—counsel have continued to exchange emails, further  
 17 clarifying their positions and narrowing any remaining areas of disagreement. *See*  
 18 Exhibit B attached hereto. Defendants have yet to respond to Plaintiffs' latest  
 19 communication regarding these issues. *See id.*

20       2.     Plaintiffs' Additional Productions Have Mooted Certain Requests: As  
 21 Plaintiffs advised the Court and Defendants, Plaintiffs intended to make a  
 22 "substantial part" of their production to Defendants on September 19, 2013,  
 23 followed by further productions "shortly after." *See* Pls.' Opp. at 5 n.3 (quoting

---

25  
 26       <sup>1</sup> The September 25, 2013 email from Gianni P. Servodidio to Defendants' counsel,  
 27 reiterating Plaintiffs' willingness to meet and confer in order to narrow the issues in  
 dispute, is attached hereto as Exhibit A.

1 hearing transcript). Plaintiffs have done exactly that. Plaintiffs made supplemental  
 2 productions to Defendants on September 24, 25, 26, 27, 29, and 30, 2013. Exhibit C  
 3 attached hereto reflects those productions. Plaintiffs have now produced all  
 4 copyright registration certificates and chain of title documents for the works for  
 5 which they intend to seek statutory damages at the upcoming trial (the “Works-in-  
 6 Suit”),<sup>2</sup> as well as available discovery related to Defendants’ users’ direct  
 7 infringements of the Works-in-Suit. This discovery comprises all or a substantial  
 8 part of Defendants’ Requests for Production Nos. 96-111 and Interrogatories Nos.  
 9 10-16. As a result, Defendants’ *Ex Parte* Application, as filed, is now effectively  
 10 moot with respect to these issues.

11       3. The Parties Have Resolved Other Disputes In Part: As Plaintiffs believed  
 12 would be the case, the parties have been able to narrow and eliminate certain aspects  
 13 of other disputes. For instance:

- 14       • Defendants’ *Ex Parte* Application asked the Court to compel production of  
 15 additional information about the Works-in-Suit in order to help Defendants  
 16 identify these works. *See* Defs.’ *Ex Parte* App. at 3-4 (requesting, e.g., that  
 17 Plaintiffs add “the copyright registration number, the date of registration, and  
 18 the name of the copyright registrant” to their Works-in-Suit list). Although  
 19 the copyright registrations themselves provide Defendants with the  
 20 information they seek, Plaintiffs have provided Defendants with an Exhibit as  
 21 part of their filing with the Court on Monday identifying the copyright  
 22 registration number for each work in suit upon which they intend to seek  
 23 damages under the current schedule. *See, e.g.*, Decl. Francis J. Aul, dated  
 24

---

25       2 Plaintiffs intend to seek statutory damages on 3,947 works. *See* Plfs. Mem of Law  
 26 in Supp. of Mot. For Summ. J. On Copyright Ownership, Causation, and Direct  
 27 Infringement at 1 & n.1.

28

1           Sept. 30, 2013, at Ex 1. This agreement resolves, in part, Defendants'  
 2           contentions regarding Plaintiffs' responses Interrogatory No. 10 and Request  
 3           No. 95.

- 4           • Based on discussions with Defendants' counsel, Plaintiffs also produced a  
 5           subset of Defendants' website Server Log Data, which includes only U.S.  
 6           download events for the dot-torrent files produced by Plaintiffs to date.  
 7           Plaintiffs have also provided Defendants with a spreadsheet identifying: (i)  
 8           “exemplar” dot-torrent files associated with Plaintiffs’ works; and (ii)  
 9           associated U.S. download event counts for those dot-torrent files. Although  
 10          Plaintiffs were under no obligation to parse Defendants' own server log data  
 11          for them, Plaintiffs agreement to do so to this extent resolves, in part,  
 12          Defendants' arguments regarding the specificity of Plaintiffs' responses with  
 13          regard to acts of direct infringement. *See* Defs.' *Ex Parte* App. at 9-12  
 14          (regarding Interrogatories Nos. 11-15 and Document Requests Nos. 102-11).
- 15          • Plaintiffs have offered to amend their responses to Interrogatories Nos. 17 and  
 16          18 in order to address concerns raised by Defendants during the meet and  
 17          confer. Plaintiffs are awaiting a response from Defendants regarding the  
 18          same.

19          In light of the foregoing developments, Plaintiffs respectfully request that the  
 20          Court direct Defendants to complete their meet and confer process with Plaintiffs  
 21          and revise and re-file their *Ex Parte* Application to: (1) include only those Requests  
 22          and Interrogatories about which disputes remain; and (2) clarify which arguments  
 23          are still at issue as to those Requests and Interrogatories. Proceeding in this way will  
 24          obviate the need to parse through Defendants' now largely outdated *Ex Parte*  
 25          Application to determine which issues have been resolved in whole or in part and to  
 26          address any remaining areas of dispute based on an appropriate record.

27

28

1 Plaintiffs are prepared to oppose Defendants' re-filed Application following  
2 the provisions set forth in the parties' joint stipulation regarding briefing schedules  
3 for *ex parte* applications and the Court's recent order regarding same. *See* Joint  
4 Stipulation (ECF No. 611).

5

6 **CONCLUSION**

7 For the foregoing reasons, Plaintiffs respectfully request that the Court deny  
8 Defendants' *Ex Parte* Application to Compel Plaintiffs' Responses to Discovery,  
9 and direct Defendants to complete their meet and confer with Plaintiffs on any  
10 outstanding issues re-file this Application, if necessary, to the extent that disputes  
11 still remain.

12 Dated: October 2, 2013

13 Respectfully submitted,

14 JENNER & BLOCK LLP

15 By: /s/ Gianni P. Servodidio  
16 Gianni P. Servodidio

17 STEVEN B. FABRIZIO  
18 GIANNI P. SERVODIDIO  
19 KENNETH L. DOROSHOW  
20 JENNER & BLOCK LLP

21 KAREN R. THORLAND  
22 FARNAZ M. ALEMI  
23 MOTION PICTURE ASSOCIATION  
24 OF AMERICA  
25 15301 Ventura Boulevard  
Building E  
Sherman Oaks, CA 91403

26 *Attorneys for Plaintiffs*

**CERTIFICATE OF SERVICE**

I hereby certify that on October 2, 2013, a copy of the foregoing Plaintiffs' Supplemental Response in Opposition to Defendants' *Ex Parte* Application to Compel Plaintiffs' Responses to Discovery was sent electronically to the attorneys listed below. A copy was also hand delivered to Mr. Elkin.

Ira P. Rothken  
Jared R. Smith  
Rothken Law Firm LLP  
3 Hamilton Landing  
Suite 224  
Novato, CA 94949

Erin R. Ranahan  
Winston and Strawn LLP  
333 South Grand Avenue 38th Floor  
Los Angeles, CA 90071-1543

12 Jennifer A. Golinveaux  
13 Robb Christopher Adkins  
14 Thomas James Kearney  
15 Winston and Strawn LLP  
16 101 California Street Suite 3900  
San Francisco, CA 94111-5802

Michael S. Elkin  
Thomas P. Lane  
Winston and Strawn LLP  
200 Park Avenue  
New York, NY 10166

### *Attorneys for Defendants*

---

Emily Chapuis